UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States
Department of Housing and
Urban Development, on behalf
of Karen Randle,

Charging Party,

v.

Alex Narlis,

Respondent.

HUDALJ 06-89-0182-1

Decided: September 11, 1990

James N. Adams, Esquire
For the Respondent

William R. Granik, Esquire
For the Department

Before: Thomas C. Heinz
Administrative Law Judge

INITIAL DECISION

Statement of the Case

This proceeding arises out of a complaint filed by Karen Randle ("Complainant" or "Mrs. Randle") alleging that she and her family had been discriminated against because of their race in violation of the Fair Housing Act, 42 U.S.C. sections 3601-19, as amended by the Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1626 (1988)("Fair Housing Act" or "Act"). The Department of Housing and Urban Development ("HUD," "the Government" or "the Department") investigated the complaint, and after deciding that there was reasonable cause to believe that a discriminatory act had taken place, issued a charge against Alex Narlis ("Respondent") on February 7, 1990. The charge alleged violations of sections 804 (a), (b) and (c) and 818 of the Act (42 U.S.C. sections 3604 (a), (b) and (c); 3617).

A hearing was held on the charge on May 23 and 24, 1990, in Pasadena, Texas. Posthearing briefs were filed by the parties on July 11 and 13, 1990.

Findings of Fact

1. Complainant Karen Randle, her husband, Walter R. Randle, and their three boys, Walter, Jr., Warick and Wayne, all of them black, moved into Lisa's Apartments, 1210 Maxey Road, Houston, Texas, in May of 1987 (Tr.15-19).[1] They lived in apartment No. 2, a one-bedroom unit (Tr.18). At the time of the hearing Karen Randle was 29 years old, her husband was 56, the youngest boy was six and the two older twin boys were approximately eight years old. (Tr.15; Sx.6)

2. Lisa's Apartments consists of 12 two-unit buildings arranged around a drive-in courtyard. Some of the units, including apartment No. 2, have a garage which opens onto the courtyard. (Tr.18)

3. During the period pertinent to this case, the monthly rental for apartment No. 2 was $280, including utilities. The Randles paid the rent in two bi-monthly payments of $140, the first of which was due by the fifth of each month. (Tr.19)

4. Respondent Alex Narlis is a native of Greece who came to this country about 20 years ago. His command of oral English is very poor. He is a naturalized citizen. At the time of the hearing he was 59 years old. He has a Master's degree in electrical engineering and worked in that field in the northeast for many years until he lost his job and was unable to find another. He then bought a van in which he lived for a year before he came to Houston and purchased Lisa's Apartments for $65,000 on December 16, 1988. He combined his last $2,000 with $8,000 from his estranged wife to make the down payment. (Tr.225,257,320-2)

5. Before purchasing Lisa's Apartments Respondent had had no training or experience managing rental property. (Tr.226)

6. The Randles paid only $220 of the February 1989 rent, leaving $60 unpaid. The Randles did not make the March 5, 1989 rent payment of $140 or pay any rent for the month of March 1989.(Tr.38)

7. On March 6, 1989, Complainant was served by a constable for the local Justice of the Peace with a notice to vacate for nonpayment of rent which stated a suit to evict would be filed unless "Walter R. Randle & All Occupants" vacated the apartment within three days. (Rx.2)

8. On March 10, 1989, Mrs. Randle filed a housing discrimination complaint with the City of Houston in which she alleged:

[1] The following reference abbreviations are used in this decision: "Tr." for "Transcript"; "Sx." for "Secretary's exhibit"; and "Rx." for "Respondent's exhibit."

I have been given a notice to vacate and threatened with having my lights turned off. My husband attempted to pay the $10 on the rent we owed plus $140 on the next months [*sic*] rent. Alex [Respondent] refused to accept the rent and told my husband that, "you Kennedy people move. Kennedy has done too much for you people."

On occasion Alex has called my kids, "Little nigger monkeys".

Sx. 12-A.

9. On March 14, 1989, Mrs. Randle went to the offices of Gulf Coast Community Services Association ("Gulf Coast"), a social welfare agency, where she successfully sought rental assistance. After conferring in person with Respondent, Gulf Coast agreed to send Respondent a check for $400, the maximum the agency provides for any one rent crisis. The Gulf Coast representative, Allene Adams, cautioned Respondent "it would take a week to ten days before he would actually get the check...." (Tr.151) Although Respondent did not fully understand the function and operation of Gulf Coast, documentary evidence indicates "he stated he would accept 400.00 & would not evict the tenant in the next 30 days." (Tr.151-52; Sx.9)

10. Complainant's lease authorized Respondent to turn off the utilities for nonpayment of rent. Because the Randles had not paid the rent, on or about March 20, 1989, Respondent had the electricity and the gas to the Randles' apartment turned off. (Tr.53; Rx.10) Mrs. Randle paid $120 to the power company to get the electricity turned back on and turned the gas back on herself although she knew doing so was unlawful. (Tr.119-120)

11. Hearings were held on Respondent's petition to evict the Randles before George E. Risner, a Justice of the Peace for Harris County, Texas, on March 21 and 23, 1989. The March 21 hearing was continued to permit Respondent to secure counsel. He was represented by counsel in the March 23 hearing at which Justice of the Peace Risner granted an extraordinary further extension of the case until March 31 to permit the Gulf Coast check to arrive. If the check had arrived by then, the case would be dismissed. (Tr.60-61,301-304)

12. Although Respondent made repeated telephone calls to Gulf Coast between March 14 and March 31 trying to discover when he would receive the promised check (Tr.93,153), it did not arrive by March 31, whereupon Respondent notified Complainant in writing that the check had not arrived (Rx.6) and reported that fact to Justice of the Peace Risner. (Tr.253)

13. Complainant was served by a constable on April 4 with a Writ of Possession issued by Justice of the Peace Risner on April 3. She and her family moved the next day. (Sx.14; Tr.66-68)

14. The Gulf Coast check was received by Respondent about April 7. (Tr.253) After consulting his attorney and Justice of the Peace Risner, Respondent returned the check to Gulf Coast.

15. From the time Respondent purchased Lisa's Apartments until the Randles left, the Randles

were the only black family living there. (Tr.20)

16. Respondent demonstrated a willingness to rent to other black people while the Randles lived at Lisa's Apartments by offering an apartment to a prospective black tenant. Respondent had other black tenants after the Randles moved out. (Tr.214,237)

17. Including her eviction by Respondent from Lisa's Apartments, Complainant has been evicted from housing three times for nonpayment of rent. (Tr.96)

18. When the Randles and Johnny Brewer, an adult, long-term house guest of the Randles, left Lisa's Apartments, they moved to another apartment complex where they stayed for about nine months until one of the managers took exception to Johnny Brewer being there, threatened the Randles with eviction, and filed for a peace bond against Mrs. Randle for using abusive language. (Tr.96,136) The Randle family then moved into the home of Mrs. Randle's mother. (Tr.99)

19. The City of Houston investigated the housing discrimination complaint filed by Mrs. Randle, and upon completion of that investigation sent a letter to Respondent which stated, "The results of the investigation do not indicate that a discriminatory housing practice occurred in the present case. Accordingly, the complaint filed against you has been dismissed." (Rx.7)[2]

SUBSIDIARY FINDINGS AND DISCUSSION

The Department argues that Respondent evicted the Randles because they are black, and that he engaged in retaliatory conduct against the Randles because Mrs. Randle filed a discrimination complaint against him. Section 804 of the Fair Housing Act makes it unlawful, *inter alia*, to make unavailable or deny a dwelling to any person, or to engage in any conduct relating to the provision of housing which makes unavailable or denies a dwelling to any person, because of race or color. (42 U.S.C. Sec. 3604(a); *see also* the regulations promulgated thereunder at 24 C.F.R. Sec. 100.50(b)(3)) Section 818 of the Act prohibits retaliation against a person because he or she has filed a housing discrimination complaint. (42 U.S.C. Sec. 3617; s*ee also*, 24 C.F.R. Sec. 100.400(c)(5))

I

In order to prevail in that part of the case charging racial discrimination, the Government need not prove that racial animus was the sole motivating force behind the challenged conduct of the Respondent. It is enough to demonstrate by a preponderance of the evidence that racial considerations were a significant factor in the Respondent's behavior. *See HUD v. Blackwell*, Fair Housing-Fair Lending (P-H) para. 25,001

[2] Although this administrative determination by the City of Houston is not conclusive in this forum, it is entitled to some weight.

at 25,006 (HUDALJ No. 04-89-0520-1, Dec. 21, 1989), *enforced*, *HUD v. Blackwell,* No. 90-8061 (11th Cir. Aug. 9, 1990). *See also Woods-Drake v. Lundy*, 667 F.2d 1198 (5th Cir. 1982); *Marable v. H. Walker & Associates*, 644 F.2d 390 (5th Cir. 1981), *vacated and remanded on other grounds,* 704 F.2d 1219 (11th Cir. 1983); *Burris v. Wilkins,* 544 F.2d 891 (5th Cir. 1977). The Government has failed to show that racial considerations formed any part of the motivation for Respondent's conduct.

The Government's case charging racial animus rests on evidence that the Respondent called the Randle children and a guest "nigger monkeys," that on several occasions he referred to the Randles as "you people," "you Kennedy people," and "your kind of people," that he treated the Randles and their guests differently than he did other tenants, and that he evicted them even though they had either offered to pay the rent or had made arrangements to have the rent paid by a social welfare agency. This charge fails largely because the testimony of Complainant was not credible.

Complainant Was Not Credible

Complainant's testimony was repeatedly inconsistent, contradictory and illogical. When she filed her housing discrimination complaint on March 6, 1989 with the City of Houston, she alleged that she had been threatened with a notice to vacate and loss of utilities, even though her husband had offered to pay the rent. "My husband attempted to pay the $10 on the rent we owed plus $140 on the next months *[sic]* rent. Alex refused to accept the rent...." (Sx.12-A)[3] At the hearing Mrs. Randle told a different story:

A March 5, I was due to pay another $140.

Q Did you pay another $140 on March 5?

A No.

Q Why not?

A At that time, I didn't have the money. We had went to--well, my husband had went to talk to Alex, making arrangements to pay it on the 10th, and Alex had told my husband that, you know, Kennedy has done so much for you people, I just want you all to move.[4]

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[3] This discrimination complaint also contains Mrs. Randle's assertion that in early March she only owed an insignificant amount of back rent, $10, whereas at hearing she conceded she owed $60, a more substantial sum. (Tr.80)

[4] This is hearsay, of course. The unexplained failure of the Government to call Mr. Randle to testify regarding these events to which he was a party raises an inference that his testimony would not have been favorable to the Government's case. *Matter of Evangeline Refining Co.*, 890 F.2d 1312 (5th Cir. 1989); *See, also,* II J. Chadbourn, *Wigmore on Evidence* , Sec. 285 (1979 & Supp. 1989)

He told W.R. [Mr. Randle], he said, remember that I have money and you don't have any. And he just stated that he didn't want us, you kind of people, staying there, and he wanted us to move.

(Tr.38) On cross-examination the story changed:

A No. The 5th was the day that the rent was due. The 5th is when W.R. went and talked to Alex. The 6th, the 7th, the 8th--Alex agreed to wait to the 8th day.

Q To keep--to push any further eviction. Is that correct?

A I don't--at that time, I didn't know about the eviction, until I received the eviction notice [on March 6]. Alex had agreed to wait the grace period days. When we received the eviction notice, W.R. said, well, I guess Alex decided to change his mind.

(Tr.79-80)

In short, Complainant has submitted three versions of the events surrounding the March 5 due date for the rent: (1) The Randles had the rent money, offered it to Respondent but he refused to accept it; (2) They did not have the rent money and Respondent told them they had to move; and (3) They did not have the rent money but Respondent agreed to wait three days before taking any action only to renege on his agreement one day later. No finding adverse to Respondent can be based on this inconsistent evidence.

Mrs. Randle was similarly inconsistent in her testimony about her financial resources in March of 1989. At one point she testified that her total resources for the month of March consisted of a welfare check for $221 received on March 3,[5] food

stamps and $120 in cash received from her husband on March 9 or 10. (Tr.136)[6] Later she testified her

[5]There is no explanation in the record why the welfare money received on March 3 could not have been used to pay the rent on March 5. Food needs were covered by food stamps and utilities were included in the rent.

[6]Mrs. Randle testified she used the $120 to make a deposit on the electricity after Respondent had the electricity turned off. She said her husband gave her the $120 for the purpose of paying the rent, but Respondent would not accept it. She stated it was simply a coincidence that the power company required the same amount of money her husband had given her for the rent. (Tr.137-138) This is the closest Complainant came at hearing to confirming the allegation in the complaint filed on March 10 with the City of Houston that before March 10 Respondent had refused an offer of rent. However, in that complaint she alleged her husband had offered to pay the *entire* amount of rent, $140, plus $10 in back rent. Furthermore, there is no evidence in the record that *Mrs*. Randle offered to pay $120 of the outstanding rent debt on or about March 9 or March 10. Since the Government has not argued that Respondent refused two offers of rent from the Randles, the first time on March 9 or 10 and the second on March 31, I conclude that no offer to pay rent was made before March 9 or 10, the allegation in Sx.12-A to the contrary notwithstanding.

husband gave her $125 on March 31 to give to Respondent for the rent. (Tr.139) At another point she testified her sister gave her some money on March 27. (Tr.65) Mrs. Randle's contention that Respondent refused her offer of $125 on March 31, if credited, arguably would tend to undermine Respondent's contention that he evicted the Randles solely because they failed to pay the rent. However, Mrs. Randle's testimony on this point is not credible because she was inconsistent about how much money she had at her disposal during the month of March, when she received it, and from whom.[7]

When she applied for rental assistance Mrs. Randle told Gulf Coast that she was a single person with three children, whereas at hearing she testified that she was married to W.R. Randle. (Sx.5; Tr.15) She also told Gulf Coast on March 10, 1989, that she was "unable to pay her rent because her husband left home last month...." (Sx.7) At hearing she was asked, "Was your husband home on March 5 or 6?" In the space of two lines she answered both no and yes to this question. (Tr.83) In order to be consistent with her testimony that her husband had met with Respondent on March 5 and was with her on March 6 when the notice to vacate was served by the constable, the answer had to be yes. In order to be consistent with what she told Gulf Coast, the answer had to be no. She tried to have it both ways, thereby further undermining her credibility.

Mrs. Randle's credibility was reduced even further by her admission at hearing that she knowingly violated the law when she turned the gas back on after Respondent had it turned off. (Tr.119) This is evidence of poor character.

In sum, Mrs. Randle's credibility was so poor that I have credited little more than those parts of her testimony which were corroborated by other witnesses.

Respondent Made No Overtly Racist Comments

In the housing discrimination complaint (Sx.12-A) she filed on March 10, 1990, with the City of Houston, Mrs. Randle alleged that Respondent called her children "nigger monkeys." That specific allegation does not appear in any of the written material submitted for the record by the Government, except Sx.12-A which was introduced into evidence after the close of the hearing. At the hearing Mrs. Randle alleged Respondent called Johnny Brewer, as well as her sons, "nigger monkeys." On direct examination she testified that Respondent made the "nigger monkeys" comment in the presence of her children in March of 1989. (Tr.27)

On cross-examination Mrs. Randle changed the date of this event to February, added Johnny Brewer as a participant, and alleged that another similar event occurred in March. (Tr.76-77) The timing of

[7] Even if Mrs. Randle did indeed offer to pay $125 of the outstanding rent on March 31, she would still have owed $215. ($60 owed from February plus $280 for March equals $340 minus $125 equals $215.) That unpaid rent could have formed the basis for an eviction action.

these alleged incidents is critical because Respondent had a notice to vacate served upon the Randles on March 6. If Mrs. Randle's cross-examination testimony regarding these incidents is believed and the first incident is found to have occurred before the notice to vacate was served, the Government's argument that Respondent's eviction of the Randles was racially motivated would become much stronger, since this is the *only* unambiguous, uncircumstantial evidence in the record that Respondent harbored any racial animus toward the Randles and Johnny Brewer. However, I am unpersuaded that Respondent ever used the term, "nigger monkeys." As shown, *supra*, Mrs. Randle generally was not a credible witness, and the only corroboration regarding Respondent's alleged use of the epithet came from Mrs. Randle's youngest son, Wayne, whose testimony I find incompetent. A bench examination at the request of the parties demonstrated that this six-year-old boy did not have a clear understanding of the difference between truth and falsehood.

JUDGE HEINZ:...Can you tell me what is the truth? [No response][8] When you tell the truth, what does that mean?

THE WITNESS: I don't know what the truth is.

JUDGE HEINZ: You don't know what the truth is? [No response] Do you know what a lie is? [No response] What is a lie?

THE WITNESS: It is like you tell the truth to the judge.

JUDGE HEINZ: I am sorry. You will have to say that again. I couldn't hear you.

THE WITNESS: Like you have to tell the truth to the judge.

JUDGE HEINZ: And what is telling the truth? [No response] Do you know what happens if you don't tell the truth? [No response] What happens if you don't tell the truth?

THE WITNESS: You get put in jail.

JUDGE HEINZ: You do? [The witness nodded his head in the affirmative.] What happens if you tell a lie? [No response] Have you ever been punished for telling a lie? [The witness shook his head in the negative.] No?

THE WITNESS: My brothers do.

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[8] The interpolations in this and the following excerpt from the transcript are based on notes made during my examination of the witness. He was clearly nervous, and at the outset quite shy. When he made nonverbal responses to my questions I verbalized them. Although more elaborate express comments from me would have made a clearer record, such comments would have interrupted the flow of the child's testimony and interfered with my attempts to build rapport and put him at ease. He was not examined by counsel for the parties.

JUDGE HEINZ: Your brothers do? [The witness nodded his head in the affirmative.] Do you always tell the truth? [The witness shook his head in the negative.] No?

THE WITNESS: I don't know.

(Tr.217-218.) This colloquy reveals a child who either has not reached sufficient maturity to appreciate clearly the difference between truth and falsehood or a child whose communication skills are not good enough to permit him to communicate his understanding of the difference. In either case, his testimony is incompetent, a conclusion confirmed by his statement that he has a sister named "Kindra" even though his mother said she only has three boys. (Tr.15,217)

Not only was Wayne Randle's testimony incompetent, but the record also shows that his testimony was unreliable because it was prejudiced by his mother.

JUDGE HEINZ: Did your mother talk with you about what you were going to say here today? Did she? [The witness nodded his head in the affirmative.] What did she tell you?

THE WITNESS: I forgot what she told me.

JUDGE HEINZ: I am sorry?

THE WITNESS: I forgot what she told me.

JUDGE HEINZ: When did she talk with you about that, about what you were going to say today?

THE WITNESS: To you?

JUDGE HEINZ: Uh-huh.

THE WITNESS: About Alex won't leave us alone. When we was staying where he -- where we used to stay. Alex won't leave us alone where we used to stay. He keep calling us a nigger monkey.

JUDGE HEINZ: Is that what your mother told you to say? [The witness nodded his head in the affirmative.] Yes? Did you remember him saying that? [No response]

(Tr.218-219.) Mrs. Randle clearly coached her son's testimony before the hearing. Accordingly, I find that the testimony of Wayne Randle has no probative value.

Although the Respondent allegedly used racially offensive language in the presence of *all* of the children, only Wayne, the youngest, was called to testify. Mrs. Randle testified at some length about the emotional distress she and her children suffered as a result of hearing this offensive epithet from Respondent. That testimony included allegations that one of the older boys, Warrick, created a disturbance at school because he "decided to act like a nigger monkey." (Tr.28) But neither of the two older boys testified. When the incidents allegedly occurred, they were seven years old, some two years older than Wayne. Presumably their testimony would have been more competent than the testimony of their younger brother. Moreover, because of their relationship to the Complainant, their testimony could be expected to be favorable. Under these circumstances, the unexplained failure of the Government to call the older boys to testify gives rise to an inference that their testimony would not have been favorable to the Complainant's case. *Matter of Evangeline Refining Co.,* 890 F.2d 1312 (5th Cir. 1989); *See also,* II J. Chadbourn, *Wigmore on Evidence* Sec. 285 (1979 & Supp. 1989). For these reasons, I conclude that Respondent never called the Randle children and Johnny Brewer "nigger monkeys."

Although the evidence will not support the contention that Respondent called the Randle children and Johnny Brewer "nigger monkeys," there is evidence that Respondent referred to Johnny Brewer as a "monkey." A white neighbor, Mrs. Patricia R. Branch, testified that she and her son heard Respondent make "the remark about Johnny sitting on the car eating like a monkey, because they were eating outside. I think he was sitting on the hood of a car." (Tr.204) Even though Mrs. Branch's son did not confirm this comment in his testimony (Tr.342-348), and even though Mrs. Branch clearly had hard feelings about her relationship with Respondent, given Respondent's testimony about Johnny Brewer discussed below, it seems more likely than not that Respondent in fact made the comment reported by Mrs. Branch. Nevertheless, the statement that Mr.

Brewer was "sitting on the car eating like a monkey" is not a sufficient basis in itself to conclude that Respondent harbored any racial animus against black people.

Ambiguously Discriminatory Comments

As for the allegations that Respondent called the Randles "you people," "you Kennedy people," and "you kind of people," the quoted language clearly is ambiguous on its face. Since it is not inherently discriminatory, the Government has the burden of showing that Respondent not only spoke these words but also that when he said them he was referring pejoratively to black people, or people of color. *See Burris v. Wilkins*, 544 F.2d. 891, *supra*. That burden has not been met here. Not only does the Respondent deny having used any of this language, the only evidence that the Respondent was using these terms as euphemisms for black people came from Mrs. Randle who merely asserted that that is what she understood Respondent to mean. (Tr. 30-31) The record is devoid of any evidence to support Complainant's assertion.

Treatment of Complainant, Her Children and Guests

A considerable amount of the controversy between Mrs. Randle and Respondent centered on

Respondent's treatment of the Randles' long-term houseguest, Johnny Brewer. Mr. Brewer, about 35 years old, apparently was unemployed, quite ill, and destitute. Respondent permitted him to stay with the Randles even though he believed that local housing laws restricted to two the number of people who may live in a one-bedroom apartment. (Tr.257) Furthermore, the lease signed by Mr. Randle prohibited Johnny Brewer from living with the Randles without the written consent of Respondent, which he had not given. (Rx.10)[9] Although Respondent did not insist Mr. Brewer move, the evidence shows he did not want Johnny Brewer to be seen outdoors, a restriction Mrs. Randle interpreted as racially motivated. The following excerpt from the transcript of Respondent's testimony is instructive:

Q Did you notice anything strange about Mr. Brewer?

A Yes.

Q Can you tell us what that was?

A This gentleman, I don't know. First of all, didn't go -- didn't walk straight when leave the apartment and go outside. Secondly, sit in some corners with the strange position also.

And I have complaints for the tenants, say, the gentleman, what he doing? Scares people. I say, not. What I can do? I can send the person notice, but when I did it, I says, Mr. Randle -- I call Mr. Randle, say, first of all, who is this gentleman? Secondly -- he says, cousin.

So in this -- also say, listen. If it is your relative, please, tell him to be like the tenants, you know. The tenants complain about him.

As a matter of fact, in that incident when you mentioned the gentleman, when every time leaves the apartments, some contact with the outside of the apartments be take place.

As a matter of fact, last week I see five Houston police sitting in the street, two, three, another black cars, and helicopter flies on the premises. When I coming from downtown, I am asking, what happened?

People told me, this gentleman -- you remember when you work in apartment two, had been arrested. Now, maybe somebody else make complaints. I don't know. And is not the only one when I feel not comfortable with this gentleman.

Q Can we get back to Johnny Brewer now?

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[9] Mrs. Randle testified inconsistently regarding her reading of this lease. When asked questions about the impact of the lease on Johnny Brewer she said, "I didn't read it." (Tr. 100) In later testimony she said, "I read the lease." (Tr.120) And then, upon realizing she had contradicted herself, she said, "I have read parts of it." (Tr. 120)

A Yes. This is the person.

Q Did you think that Johnny Brewer -- you say he walked in a strange way. Did you think he looked funny?

A The movement when he makes it was really strange to me.

Q Well, he looked strange to you. Did you think he resembled an animal?

A What?

Q Did he look like an animal?

A No.

Q When he was sitting --

A No. Like a person when -- I don't know. I approach once, and he didn't close to me, and I ask him, who are you, sir, and he said, I am relative to Randle. But the method -- when I mentioned how strange walking, doesn't walk like person who needs -- no, or drunk, or I don't know. I am sorry.

Q He walked like he was drunk?

A I say to you, it was very close when I am talking. I can't -- I don't know if it was drunk or something else happen to him.

Q Were you embarrassed to have him out on your property?

A First of all, I didn't do nothing. After were come some complaints from the tenants, I start to talk Mr. Randle, Mrs. Randle, and he do.

Q Was there ever a time when you complained about him being out in front of the property or sitting on the truck?

A No. I didn't. But I didn't -- to be honest, I didn't like to have complaints for the tenants. He, it was not -- first of all, compromise me. I see many people living in my apartment with one room, I am try to cover him, tell him, hey, if you like to go someplace, don't show when we are too many peoples in there. Maybe somebody goes -- I don't know, make some complaints about me. I don't like to broke the law.

Q Are you saying that your tenants were complaining about him?

A Yes.

(Tr.268-271) This rather lengthy excerpt from the transcript amply illustrates Respondent's communication difficulties. Although it is difficult to know exactly what he meant here as well as elsewhere in the transcript, the thrust of the testimony seems to be that he and some of his tenants thought Johnny Brewer strange, that some of his tenants complained about Mr. Brewer, that Respondent was afraid complaints might be made to local authorities which would reveal that his apartments contained too many people, and that he requested Mr. Brewer keep out of sight. None of this reveals racial animus on the part of Respondent.

Mrs. Randle testified that Respondent discriminated in his treatment of her children. She said Respondent told her children not to play outside, and despite having had no conversations with the neighbors' children or their parents on the subject, she was adamant in her conviction that he did not place similar restrictions on the neighbors' children. She came to that conclusion simply and solely because she had observed the neighbors' children playing outside. In her words, "If he asked them for

them [*sic*] not to play outside, why were they playing outside?" (Tr.109) Official notice may be taken of the fact that children do not always do what they are told by adults. Assuming, *arguendo*, that Respondent did indeed restrict the Randle children's movements, just because Mrs. Randle observed the neighbors' children outside does not necessarily mean Respondent did not attempt to place the same restrictions on other children living at Lisa's Apartments. Mrs. Randle's stated belief that Respondent discriminated in the treatment of her children is illogical and unsupported by the evidence. In any event, the only evidence that Respondent restricted the activities of Complainant's children came from Complainant, and she was not a credible witness.

Complainant also contends Respondent treated her discriminatorily in March of 1989 by forbidding her to barbecue outside and by restricting the number and kind of her visitors. (Tr.28-35) Respondent denied these contentions. (Tr. 235,238,243) The only evidence corroborating Mrs. Randle's contentions came from a visitor, Christina Vallado, who credibly testified that Mrs. Randle told her Respondent had placed restrictions on visitors to the Randles. Since Mrs. Randle was not a credible witness and Christina Vallado could only offer hearsay evidence that Respondent placed restrictions on visitors to the Randles, it is highly doubtful that Respondent did so. Furthermore, there is no evidence that Respondent treated other tenants any differently than he treated the Randles and their visitors. Therefore, even assuming for purposes of argument that Respondent restricted the Randles from the full and free use of the property, in the absence of evidence of discriminatory treatment, the Government has not proved racial discrimination.

Eviction Despite Oral Promise Not to Evict

When Respondent met with Complainant and the Gulf Coast representative on March 14, 1989, he orally agreed that he would permit the Randles to stay in the apartment for 30 days without evicting them. However, the record reveals considerable confusion among the parties as to the meaning of that

agreement. At hearing they could not agree whether the 30 day period was to run from the date of the agreement (March 14), from the date the check was to be sent, from the date Respondent was to receive the check, from the first day of unpaid rent in February, from the date of the eviction notice (March 6), or from some other date. Since Respondent had the Randles evicted as of April 5, if the agreement required Respondent to wait for 30 days from the date of the agreement (March 14), he violated it. Likewise, if the 30 days was supposed to run from the date the check was issued or the date Respondent received the check, since he received that check on April 7, he violated the agreement by evicting the Randles on April 5. Two representatives of Gulf Coast testified that the rental assistance program is designed to give tenants who have been served with eviction notices a month's rent so that they will not be put out in the streets. (Tr.146-7, 173) Although William M. Lawton, director of the program, testified that he believed the 30- day period was supposed to run from the date the check is sent (Tr.179), since that date apparently varies from case to case, and in this case cannot be determined, I cannot credit Mr. Lawton's interpretation of the agreements his agency negotiates with

landlords. That interpretation invites the kind of confusion demonstrated by this case because no one can be sure when the 30 day period begins.

Given the stated purpose of the rental assistance program, the most reasonable interpretation of the agreement is that the 30 day period begins with the first day of unpaid rent, or from the date of the eviction notice. Under this interpretation Respondent did not violate the agreement, since 30 or more days of unpaid rent elapsed before he effected eviction. In any event, whether or not Respondent breached a contract as a matter of state contract and landlord-tenant law,[10] the ambiguity of the agreement precludes a finding that Respondent acted in bad faith or out of racial animus when he evicted the Randles.

The conclusion that Respondent acted in good faith when he had the Randles evicted in April is confirmed by Respondent's credible testimony to the effect that he acted according to the guidance and direction of the Justice of the Peace, personnel associated with the Justice of the Peace, his counsel, and an experienced fellow landlord, H. Ray Adams. Mr. Adams testified, "I advised him to evict. Even when he asked me if he could back off on the eviction, I still advised to evict." (Tr.326)

The record contains considerable evidence that Respondent evicted the Randles solely because they failed to pay the rent, not because of their race. Money was the clear motivator. Respondent repeatedly testified that he had too many empty apartments and that he was desperate for money. (Tr.228,233,236-37,245,257) There was no requirement for him to go to Gulf Coast with Mrs. Randle to see if the rent money could be secured. Likewise, there was no requirement that he agree to delay eviction proceedings in order to allow Gulf Coast time to process Mrs. Randle's application and send him a rent check. And he repeatedly telephoned Gulf Coast trying to find out when the check was going to arrive. (Tr.93,153) This is not the behavior of someone who is eager to evict black tenants. In short, the Government failed to show that racial considerations played any part in Respondent's treatment of

[10] The director of Gulf Coast testified, "We don't have a binding contract with any of the landlords." (Tr.181)

Complainant, her family and guests.

II

The Act prohibits a housing provider from coercing, intimidating, threatening or interfering with anyone in the exercise or enjoyment of, or on account of his having exercised or enjoyed any right granted or protected by the Act. 42 U.S.C. Sec. 3617. The Government charges that Respondent retaliated against Complainant for filing a discrimination complaint with the Department.

Cases under Title VII of the Civil Rights Act of 1964 (42 U.S.C. Sec. 2000e) provide some guidance for retaliation claims under the Fair Housing Act. Those cases apply a three-step test to determine whether or not a claimant has established a *prima facie* case of retaliation: (1) Did the employee engage in activity protected by the statute? (2) Did the employer take an "adverse employment action" against the claimant? and (3) Does a causal connection exist between the protected activity and the adverse action? *See, e.g., Gonzalez v. Carlin*, 907 F.2d 573,578 (5th Cir. 1990); *Zanders v. National R.R. Passenger Corp.,* 898 F.2d 1127,1135 (6th Cir. 1990); *Dwyer v. Smith,* 867 F.2d 184, 190-91 (4th Cir. 1989); *Williams v. Cerberonics, Inc.,* 871 F.2d 452,457 (4th Cir. 1989).

This part of the Government's case rests on much of the same evidence relied upon to prove Respondent was motivated by racial animus, plus evidence that Respondent attempted to get Mrs. Randle to drop her discrimination complaint and evidence that he harassed her after she moved from Lisa's Apartments. The Government has failed to establish even a prima facie case of retaliation.

Respondent Did Not Harass Complainant

The Government contends that by following Complainant around and spying on her, Respondent harassed Complainant after he evicted her. Respondent owned a brown van with bars on some of the windows. Mrs. Randle was certain that Respondent spied upon her from that van because she saw the van parked near her mother's home where she was living in early 1990. She held that conviction even though she did not take down the license plate number to confirm that the van belonged to Respondent and she did not actually see Respondent in the vehicle. She also believed that Respondent spied upon her from inside a blue van because she saw a blue van parked in the same place where she saw the brown van, even though she never saw who was inside the blue van. (Tr.132-133) Complainant's conclusions regarding the blue van obviously defy basic logic.

Despite Mrs. Randle's assertion that she was frightened by Respondent's carrying a handgun, the record fails to reveal any evidence that Respondent intended to intimidate or harass Mrs. Randle with a firearm.

The Government argues Respondent caused harassing and threatening telephone calls to be made to Complainant. However, the only evidence submitted in support of this argument consisted of Mrs.

Randle's assertion that in one of the many calls she received she recognized the voice of Mrs. Garza, another tenant at Lisa's Apartments. Mrs. Garza had had repeated confrontations with Mrs. Randle over the Randles' dog and testified in support of Respondent. The Government's argument on this point is conspicuous for its lack of merit.

Issues Regarding Discrimination Complaint

On several occasions Respondent asked Complainant to drop her discrimination complaint, and he offered not to evict her if she would drop the discrimination complaint and if the check from Gulf Coast arrived by March 31. The Government argues that this evidence demonstrates unlawful retaliation by Respondent for the filing of a housing discrimination complaint. There is no merit to that argument. The Gulf Coast check did not arrive by March 31, and the fact that an offer of settlement was made does not in itself evidence a violation of law. Several entreaties to drop a discrimination complaint do not constitute coercion. There is no credible evidence in the record that Respondent engaged in retaliatory conduct because Complainant had filed a housing discrimination against him.

In sum, the Government's case regarding retaliation fails at steps two and three of the *prima facie* analysis. The filing of a housing discrimination complaint is a protected activity (step 1); Respondent took an "adverse action" against Complainant by evicting her (step 2); There is no credible proof the eviction was caused by the filing of the discrimination complaint (step 3) because the eviction proceedings began before the complainant filed the complaint.

The other charges of adverse action (that is, discriminatory treatment, harassment and intimidation) fail for want of credible proof, as discussed *supra*. Therefore, with regard to such charges, the Government's *prima facie* case of retaliation founders at step two.

CONCLUSION AND ORDER

The Government has failed to prove by a preponderance of the evidence that Respondent has engaged in a discriminatory housing practice or engaged in conduct in retaliation for the filing of a housing discrmination complaint. *See* 42 U.S.C. sections 3604 (a), (b) and (c); 3617. Accordingly, the charge is DISMISSED.

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THOMAS C. HEINZ
Administrative Law Judge